

### **307 KAR 2:010. Kentucky Jobs Development Act Program.**

RELATES TO: KRS 154.24-010-154.24-150

STATUTORY AUTHORITY: KRS 154.20-033, 154.24-090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 154.24-090 authorizes the authority to promulgate administrative regulations regarding the approval of eligible companies and economic development projects conducted by those companies. This administrative regulation establishes necessary to set out the application process, hearing procedure and project selection criteria for the Kentucky Jobs Development Act Program established pursuant to KRS 154.24-010 through 154.24-150.

Section 1. Definitions. (1) "Act" means KRS 154.24-010 through KRS 154.24-150.

(2) "Activation date" means a date that:

(a) Shall be designated by the company and set forth in the service and technology agreement, within two (2) years from the date of the authority's final approval resolution; and

(b) Commences the company's ten (10) year period of eligibility for wage assessments and income tax credits.

(3) "Approved company" is defined in KRS 154.24-010(3).

(4) "Assessment" is defined in KRS 154.24-010(5).

(5) "Authority" is defined in KRS 154.24-010(6).

(6) "Commonwealth" is defined in KRS 154.24-010(8).

(7) "Economic development project" is defined in KRS 154.24-010(9).

(8) "Eligible company" is defined by KRS 154.24-010(10).

(9) "Full-time employee" is defined in KRS 154.24-010(13).

(10) "Inducements" is defined in KRS 154.24-010(15).

(11) "KRS" means the Kentucky Revised Statutes, as they may be amended from time to time.

(12) "Rent" is defined in KRS 154.24-010(19).

(13) "Service or technology" is defined in KRS 154.24-010(20).

(14) "Start-up costs" is defined in KRS 154.24-010(21).

Section 2. Service or Technology; Excluded Classifications. (1) "Service or technology" defined in KRS 154.24-010 shall not include the following classifications listed by division in the index of the "North American Industry Classification System" (2002 ed.) published by the United States Office of Management and Budget and incorporated by reference in Section 7 of this administrative regulation:

(a) Section 11. Agriculture, forestry, fishing, and hunting;

(b) Section 21. Mining;

(c) Section 23. Construction; and

(d) Section 31-33. Manufacturing.

(2) Any company principally engaged in an ineligible activity, including those listed in subsection (1) of this section, may be approved for the Kentucky Jobs Development Act Program if the company's service and technology activity:

(a) Complies with the requirements of this administrative regulation;

(b) Is operated by the company in a separate division; and

(c) Is approved by the authority.

Section 3. Kentucky Jobs Development Act Program. (1) A company wishing to participate in the Kentucky Jobs Development Act Program shall file an application with the authority which shall contain:

(a) Documentation and certification required pursuant to KRS 154.24-090(1). Documentation of services provided for persons located outside the Commonwealth shall include the annual gross revenues directly generated from the economic development project. In the case of those economic development projects which for purposes of the approved company and in accordance with generally accepted accounting principles do not generate revenues, the required documentation shall include the annual gross revenues generated by the entity for which the services from the economic development project are provided;

(b) Information required pursuant to KRS 154.24-090(2), (3) and (4);

(c) A list of the competitors of the applicant in the Commonwealth;

(d) Notice that a \$500 nonrefundable application fee payable to the authority shall be submitted with the application;

(e) A brief history of the business and description of the project, including description of service or technology activities;

(f) A letter of support from the appropriate local elected officials, including an acknowledgment that the local community is supportive of the job assessment incentive;

(g) Notice that an administrative fee of one-tenth (.1) of one (1) percent of the estimated approved costs for the entire period, with a minimum administrative fee of \$1,000 in addition to the \$500 application fee, is payable upon execution of the service and technology agreement. If the approved costs, as finally determined, are adjusted upward, the administrative fee shall be increased commensurately;

(h) Notice that a completed Economic Development Incentive Disclosure Statement as incorporated by reference, shall be submitted as a part of the application;

(i) Projected costs and a breakdown of those costs, including:

1. Annual rent for the building or the fair rental value if the building is being purchased;
2. Start-up costs as defined in KRS 154.24-010(21); and
3. Relocation costs as defined in KRS 154.24-010(18);

(j) For the ten (10) year period of the financial assistance:

1. The annual estimated wages to be paid;
2. The annual wage assessment; and
3. The annual income tax credit;

(k) The current number of jobs at the project location, both full time and part time;

(l) The number of new full-time and part-time jobs to be created at the project location by the activation date;

(m) The total projected number of full-time and part-time jobs that will exist at the project at the activation date; and

(n) The number of skilled, semiskilled, unskilled, managerial and technical jobs created by the projects.

(2) Pursuant to KRS 154.24-100 the authority may preliminarily approve eligible companies after consideration of the application for the Kentucky Jobs Development Act Program if it determines the company meets all the requirements of the Act and this administrative regulation.

Section 4. Hearing Procedure. (1) The authority shall appoint a hearing agent and hold at least one (1) public hearing to solicit public comments. At the hearing the company shall address the criteria in KRS 154.24-090.

(2) The hearing shall be held in Frankfort and notice of the hearing shall include the date, time and precise location, including street address, where the hearing shall be held.

(3) The public shall be afforded the opportunity to present evidence and comment on the application at the public hearing.

(4) Public hearings shall be conducted informally to allow reasonable commentary on the appli-

cation.

(5) Public hearings shall be tape recorded by the authority and copies made available to the public. Any person requesting a copy of the tape shall provide a blank audio cassette upon which the copy will be provided.

(6) The hearing agent shall summarize the comments offered at the public hearing and shall submit the summary to the authority for its consideration of whether to designate the eligible company as an approved company.

(a) The hearing agent shall not express an opinion about whether the eligible company should be designated by the authority as an approved company.

(b) Two (2) copies of the report of the hearing agent shall be completed and provided to the authority at least ten (10) days prior to its meeting to consider designating the eligible company as an approved company.

**Section 5. Service and Technology Agreement Contents.** The authority may require the following additional information as a part of the negotiated terms of a service and technology agreement pursuant to KRS 154.24-120:

(1) Annual, quarterly or monthly progress reports to the authority;

(2) Annual, quarterly or monthly certifications to assure compliance with KRS 154.24-090(1), 154.24-120(2)(b) and 154.24-140(4);

(3) Annual certifications of rental payments referred to in KRS 154.24-130(2);

(4) Annual, quarterly or monthly financial reports to the authority;

(5) Access to the approved company's records; and

(6) Access to the approved company's facilities.

**Section 6. Activation.** If an approved company has not met the job creation requirements as set forth in KRS 154.24-090 and the service and technology agreement by its activation date, the company shall lose its approved company status and shall not be eligible for the authorized inducements under the service and technology agreement, unless it requests and receives an extension pursuant to KRS 154.24-090(2). The extension established by KRS 154.24-090(2) may only be granted to permit the company to create the number of jobs required by statute. No inducements may be taken during the extension period until the job creation requirement is met.

**Section 7. Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) The "Application for Kentucky Jobs Development Act Program" (Application) which also includes the "Economic Development Incentive Disclosure Statement"; and

(b) The "North American Industry Classification System" (2002 ed.) (NAIC) from the United States Office of Management and Budget.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the offices of the Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. (19 Ky.R. 2533; Am. 20 Ky.R. 69; eff. 6-25-93; 21 Ky.R. 2737; 22 Ky.R. 39; eff. 7-6-95; 29 Ky.R. 2968; 30 Ky.R. 279; eff. 8-13-2003.)